assignments he might be given, who he might be angering in the Department of Defense, who he might be pleasing within the Department of Defense, either consciously or subconsciously.

As I said earlier, intelligence should be above politics, and it also should be above the politics within the Pentagon of assignments and of budgets and of other considerations. A law stating that the position as Director of Central Intelligence or National Intelligence is a final military assignment would help clarify this position in detail. It is an issue I will raise again during the consideration of the Defense authorization bill.

General Hayden has agreed, in consultation with Senator WARNER and also in consultation with his family, that it is his intent to make this his final military assignment. I have no doubt that he will do that, but I believe it is important to formalize this provision in the law. That is why I will bring this to the attention of our colleagues when the Defense authorization bill comes to the floor.

There is another issue, of course, that is of concern. That issue is the administration's terrorist surveillance program. General Hayden headed the National Security Agency when the program was proposed and implemented. From what we know today, that program conducted electronic surveillance of international telephone calls and collected millions of domestic phone records. Let me be clear. A vote in support of General Hayden should not be construed as an endorsement of this administration's surveillance program. Nor should concerns about the administration's programs be viewed as an unwillingness to adopt aggressive intelligence activities against those who truly threaten this country. I believe we still do not know enough of the facts about these programs. From what I do know, however, I have grave concerns.

A thorough investigation must be conducted and must be conducted in a timely manner, but General Hayden was not the creator of the program, nor was he the one to provide the legal authority for the program. He stated he needed authority to implement such a surveillance program and the administration provided him with the authority he felt was sufficient. On this issue, at this time I will give General Hayden the benefit of the doubt.

I did support the nomination of General Hayden. I am certain he knows he is taking a very difficult job at a very difficult moment.

Many other honorable men and women have joined this administration. They have come to this administration with years of experience and expertise, and they have found themselves in very difficult dilemmas, where their experience and their expertise was challenged by this administration. Their objectivity, their sense of duty—not to a particular President but to the country overall—has been seriously challenged. In certain cases, the only remedy for these individuals is to resign rather than continue to support policies that they feel in their hearts and in their minds are not serving the best interests of this country. General Hayden might come to such a decision point, and I hope, given his skill, his experience, and his dedication to duty, that he would take the harder right than the easier wrong.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Pennsylvania.

CONGRESSIONAL NOTIFICATION UNDER THE NATIONAL SECURITY ACT

Mr. SPECTER. Mr. President, I voted against General Hayden for the position of Director of Central Intelligence as a protest vote against the administration's policy of not informing the Congress, with special emphasis on the Judiciary Committee, in a way which enables the Congress and the Judiciary Committee to do our constitutional job on oversight. I have no quarrel with General Hayden. He is a man with an outstanding record. I have no objection to his retaining his military status. He has testified in a way, before the Intelligence Committee, which was candid. I would be especially pleased to support a fellow Pennsylvanian. But in light of what the administration has done on the NSA program, which he has headed for many years, I feel constrained to vote ''no'' as a protest.

The administration has not complied with the National Security Act of 1947, which requires notification of all members of the Intelligence Committee. That was only done in the few days prior to the confirmation hearings on General Hayden. In fact, the administration for years notified only the so-called Gang of 8, the majority and minority leaders of the House and Senate, and the chairmen, vice chairman, and ranking members of the Intelligence Committees. Just because that had been the practice, it is not justification for violating the express language of the National Security Act of 1947, which requires notification of all members of the Intelligence Committees.

During the 104th Congress, I chaired the Intelligence Committee, and for that period of time I was a member of the so-called Gang of 8. Candidly, I don't think the administration told the Gang of 8 very much about what went on.

Be that as it may, admittedly the administration did not tell anybody but the Gang of 8 about their electronic surveillance program until it was disclosed by the New York Times on December 16 and the Judiciary Committee brought in the Attorney General and had pressed on in a series of hearings; then, belatedly, a subcommittee was formed in the Intelligence Committee and seven additional members were informed. Then, at first, the House resisted to having only part of their Intelligence Committee informed, but, finally, 11 Members of the House were informed. Then, in the wake of the Hayden nomination, the administration finally complied with the Act by informing all of the members of the Intelligence Committee—I think, plainly, so that they could get General Hayden confirmed.

When the Judiciary Committee called in Attorney General Gonzales on February 6, which was the first day we could do it after the mid-December disclosures and the hearings which we had scheduled on Justice Alito, it was an embarrassing performance. The Attorney General refused to say anything of substance about what the program was. We were ready to retire into a closed session, had that been productive, but it was a situation where the Judiciary Committee was stonewalled, plain and simple.

The Attorney General then wrote us a letter on February 28 seeking to clarify and explain what he had testified to before—and only more questions were raised. We have still not resolved the issue as to whether we will recall the Attorney General before the Judiciary Committee, but there is a question as to its value and whether we can get anything from a repeat performance from Attorney General Gonzales. As I say, that remains an open question.

In the interim, I have proposed legislation which would turn over the administration's surveillance program to the Foreign Intelligence Surveillance Court. That court has a record of expertise. That court has a record for not leaking and we could have it make the determination as to the constitutionality of the program.

We had a hearing where we brought in four ex-judges of the Foreign Intelligence Surveillance Court who know its operations in great detail. They made some suggestions which were incorporated into my proposed legislation, thereby improving it. They answered the questions about the possibility of an advisory opinion and the issue of the case in controversy requirement.

I have since conferred with Senator FEINSTEIN and Congresswoman JANE HARMAN, ranking member on Intelligence in the House, about working on legislation. Both of those individuals have been privy to briefings by the administration on the program. There was a suggestion that, with additional resources and with some structural changes—for example, expanding the 3-day period to 7 days—the FISA Court would be in a position to pass, on an individual basis, the program. Whether that is so or not, I don't know, but that is a possibility.

When the disclosures were made about the telephone companies providing substantial information to the administration and the NSA, the Judiciary Committee scheduled a hearing. We had it set for June 6. Yesterday, in an executive session, the issue was considered about subpoenas, since two of

the four telephone companies had requested subpoenas; the issue was also raised as to a closed session.

There were objections raised by some members of the committee about calling in the telephone companies. Suggestions were made by other members of the committee about calling in other members of the administration.

Since we were in the middle of the debate on immigration, we held a very brief meeting in cramped circumstances in the President's Room off the Senate floor. It was decided to defer the hearing with the telephone companies by 1 week to give the committee an opportunity on June 6, the same date we had previously scheduled a hearing, to consider these issues and decide them at greater length.

An interesting suggestion was made by one of the members of the committee—that in the past, when that member of the Judiciary Committee was on the Intelligence Committee, he had called for a secret session of the full Senate to discuss matters which had been disclosed to him in the Intelligence Committee which he was barred from saying publicly. That is an avenue which I am currently pursuing.

The stonewalling of the Congress—and particularly the Judiciary Committee and precluding the Judiciary Committee from discharging our constitutional duty of oversight—is particularly problemsome in light of a pattern of expanding executive authority.

A ranking member of the administration reportedly told a ranking member of Congress that ''we don't have to tell you anything.'' We have scheduled a hearing on signing statements where the President has asserted his authority to pick and choose what he likes and what he doesn't like in legislation which was passed by the Congress and signed by the President.

The Constitution gives the President the authority to veto but not to cherry pick.

We have the case of Judith Miller, the newspaper reporter put in jail for 85 days during an investigation of a national security issue as to whether the identity of the CIA agent had been disclosed, but there was also an investigation as to whether there had been perjury or obstruction of justice during the national security investigation. Perjury and obstruction of justice are serious charges, but they do not rise to the level of a national security issue, which would be the threshold for such action as jailing a reporter for 85 days.

We now have the situation where the Attorney General, on a Sunday talk show last week, raised the possibility of prosecuting newspapers under a World War I espionage statute.

We have the situation where the congressional quarters of Congressman JEFFERSON were subject to a search and seizure warrant without prior notification of the Speaker of the House of Representatives or someone in the House, with very serious questions raised there.

I am advised by one of the members of those informed on the administration's surveillance program that, reportedly, the FBI now seeks to question Members of Congress about disclosures on the administration's surveillance program.

These are all circumstances and situations which pose very substantial peril to the separation of powers, and Congress has not asserted its Article I powers and ought to do so.

I have talked to FBI Director Mueller and to the Deputy Attorney General about the search and seizure on Congressman JEFFERSON. This is a matter which ought to be inquired into—perhaps quietly—to see if a protocol can be arrived at about what would be done if this situation were to reoccur in the future.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair.

(The remarks of Mr. SPECTER pertaining to the introduction of S. 852 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BYRD. Mr. President, for how long am I to be recognized?

The PRESIDING OFFICER. For as much time as the Senator consumes.

Mr. BYRD. I thank the Chair.

Mr. President, I yield to my distinguished friend from Montana so that he may speak for not to exceed 10 minutes, and that I then be recognized in my own right.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Montana is recognized for 10 minutes.

Mr. BAUCUS. Mr. President, thank you, and I thank my good friend from West Virginia. I know what he is going to speak on. The person he is going to speak about was a great person, a person I very much admired, as I admire the Senator from West Virginia—a wonderful relationship, wonderful, wonderful. It is a model for so many of us in the Senate and the country. I thank my very good friend.

Mr. BYRD. Mr. President, I thank my dear friend, Senator BAUCUS, for his kind remarks.

SENATOR LLOYD BENTSEN

Mr. BAUCUS. Mr. President, it is with great sadness that I join my colleagues in mourning the passing of a great man, an extraordinary statesman, and a good friend: Senator Lloyd Bentsen.

Lloyd Bentsen was the noblest of Americans. Courtly, thoughtful, and soft-spoken, Senator Bentsen embodied the finest traditions of America.

Lloyd Bentsen and I shared a perspective. It was based on the states that we came from. I used to tease Senator Bentsen that Montana is what Texas would be like, if all the things that Texans say about Texas were true.

We shared an outlook born in the wide open spaces of our great Land. We came from states that are larger than counties in Europe. You can go great distances in Montana or Texas without seeing another soul. And with that comes a view that values our fellow man.

We also shared a view of this Senate. We could not have been more compatible. We shared a goal, always to accomplish something good on behalf of the American people.

We also shared a hallway on the 7th floor of the Hart Senate office building. I had good fortune to get an office next door to Senator Bentsen's. Our two teams were very closely woven together.

Very often I would wonder where in the world my staff was. They would be down the hall talking to Bentsen's staff because they we are so compatible and had such good ideas.

My staff would often go to his for sage advice, as I would go to him. We would often walk over together for votes.

Senator Bentsen was a role model. He was smart, tough, and disciplined. He was always focused. He always maintained his temper. And he always kept his integrity. He was a Senators' Senator.

Lloyd Bentsen was a singular person. He was reserved, even-tempered, and fair. He reserved judgment, learned the facts, and listened to all points of view. And then he would take a strong position. And more often than not, that position would prevail.

Lloyd Bentsen had the strongest commitment to duty. Even after 14 hours of floor work, he would walk into a room for all-night budget negotiations. He would not complain. He would say: ''This is what I signed up for.''.

Lloyd Bentsen contributed greatly to this Country. He served bravely in the Air Force. He served 6 years in the House of Representatives. He served 22 years in this Senate. He served 6 years as chairman of the Finance Committee. And he served 2 years as Secretary of the Treasury.

Lloyd Bentsen stood for responsibility, probity, and civility. He was a champion of sound tax policy. He fought for and achieved some of the most significant deficit reduction in our Nation's history. He played key roles in the 1990 budget summit and President Clinton's 1993 deficit reduction legislation.

And Senator Bentsen was a leader in international trade. We worked closely together for more than a decade, early on, to develop a Democratic position that supported free trade. We did so with an aggressive policy that broke down international trade barriers to American products. We worked closely on a series of initiatives, for at least a decade.

Chairman Bentsen skillfully and successfully worked to win passage of the 1988 Trade and Competitiveness Act. He guided the United States-Canada Free Trade Agreement through the Senate.